

G2IVHALS1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

15 CR 326 (JSR)

6 NATHANIEL HALL,

7 Defendant.

SENTENCE

8 New York, N.Y.
9 February 18, 2016
10 5:53 p.m.

11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14 APPEARANCES

15 PREET BHARARA,
16 United States Attorney for the
17 Southern District of New York

18 ANDREW D. BEATY
19 Assistant United States Attorney

20 JAMES ROTH
21 Attorney for Defendant

22 ALSO PRESENT: ASHLEY BOROFSKY, Postal Inspection Service

G2IVHALS1

1 (Case called)

2 THE COURT: We are here for sentencing.

3 Before we really get into it, have counsel seen the
4 memorandum that was submitted earlier today by pretrial
5 services?

6 MR. BEATY: Yes, your Honor.

7 MR. ROTH: Yes, I received it about an hour ago. I've
8 seen it and reviewed it with my client, Judge.

9 THE COURT: Because, to be frank, it makes me somewhat
10 less sympathetic to your client than I was after reading your
11 fine submissions because it looks like he has repeatedly lied
12 about his drug use.

13 MR. ROTH: Judge, I'm happy to address that.

14 The memo suggests, your Honor, that since your
15 Honor -- he tested positive on October 21st in a mandated drug
16 treatment program; that in the approximately three and-a-half
17 months that he's been going to the program, he had two dirty
18 urines. I would just ask the Court to balance that in light of
19 the fact that he's been having -- struggling -- and this is the
20 first time he's confronted his drug addiction after decades of
21 drug addiction. I understand and I've had numerous --

22 THE COURT: My problem is not with the drug addiction
23 per se. Everyone knows that it is a very difficult thing to
24 be -- your client has a difficult background. That is
25 certainly not surprising that he has turned to drugs.

G2IVHALS1

1 All of that had made me sympathetic to him. But what
2 I am not sympathetic to is knowing that he's facing sentence,
3 knowing that it's critical that this Court have honesty from
4 all concerned, he's made a series of false statements denying
5 drug use or minimizing drug use, etc., etc. That's the problem
6 I'm having.

7 MR. ROTH: There's no question, Judge, he's wrestling
8 with a demon. Every time he comes down to pretrial, he comes
9 over to my office and he discusses it and we go back and forth
10 about it.

11 I can only say he's doing the best that he can under
12 the circumstances. He is, your Honor -- when you say
13 "unfortunate circumstances," for example, probation indicates
14 he's difficult to supervise because he doesn't have carfare to
15 get there. Every time he comes to my office we go through the
16 same thing; I give him carfare.

17 But to compound things, he said to me last week, he
18 said, If the judge puts me in, if I'm going to go in, I'm going
19 to give up my house so I don't have to pay the extra rent.

20 And I say, Well, what if the judge lets you surrender
21 so you can get the extra points at BOP for a lower
22 classification, I said, what will you do then?

23 He said, I'll just go live in the shelter till I have
24 to surrender.

25 I mean this is what his life has been unfortunately.

G2IVHALS1

1 THE COURT: He's led a difficult life. But the line
2 I'm drawing or at least the concern I have is I can't be of any
3 help to him, let alone give him the benefit of the doubt, so to
4 speak, if he lies. We're not asking him to become a model
5 citizen; we're not asking him to overcome instantaneously his
6 drug problems; we're not asking him to put out of his life all
7 the vicissitudes that he is experiencing right up to the
8 present. All we're asking him is to tell the truth and he
9 doesn't seem to be able to do that.

10 MR. ROTH: Judge, Judge, I think -- and again, not to
11 denigrate it, but Mr. Hall has been a hustler all his life.

12 THE COURT: He's not going to hustle me.

13 MR. ROTH: No, I understand that.

14 What I'm saying to you though, Judge, is finally he's
15 come to the point where fortunately or unfortunately many of
16 the clients that I come to represent who come through the state
17 system, their motto afterwards is "The feds have made me a
18 believer." He knows this is the end of the rope for him, he's
19 going to jail, and he's got to confront his drug problem. He's
20 wrestling with it.

21 His brother is here in court today to support him, as
22 is his sister-in-law. But it hasn't been easy. I mean I have
23 to say also he was gone once a week to treatment. And in my
24 experience with people who have had very lengthy drug
25 addictions, it takes more than once a week to really come to

G2IVHALS1

1 terms.

2 THE COURT: I totally agree with that. But, again,
3 that's my issue, but I do agree with that.

4 MR. ROTH: One other comment: Everyone sees things in
5 their own prism, but probation said he told the drug program he
6 wasn't coming back after sentencing. I think that that was a
7 misrepresentation or misinterpretation. I think he was
8 thinking that he's going to get sentenced and good-bye, I'm
9 probably not going to see you again.

10 THE COURT: Well, that may happen because in light of
11 what I've learned, I've asked the marshals to be present here
12 in case we have to incarcerate him immediately.

13 (Continued on next page)

14
15
16
17
18
19
20
21
22
23
24
25

G2i2hal2

1 THE COURT: Let's turn to sentencing more formally:
2 The parties, I think, are agreed -- and the court is
3 in agreement -- that the offense level is 16, the criminal
4 history category is V, and the guideline range, which is not
5 binding on the court, but which the court must consider, is 41
6 to 51 months. But defense counsel has put in both his own
7 submission and some very helpful letters asking for a
8 nonguideline sentence; and the government, by contrast, to my
9 utter surprise, recommends a guideline sentence.

10 So let's hear first from defense counsel, then the
11 government, then from the defendant if he wishes to be heard.

12 MR. ROTH: Judge, I won't -- and I purposely didn't --
13 rehash the current state of the law about guidelines. Your
14 Honor is clearly aware that the opportunity for my client to
15 profit in this, in terms of the actual amount, was just a
16 factor of how much his handler, so to speak, would pay him on
17 given occasions. There is no doubt that the acts he committed
18 were serious acts and harmed people and harmed companies,
19 harmed financial institutions. He knows that.

20 I will say, I was surprised when he was able to garner
21 those letters from people in his community, and I had to force
22 him really to go out and get those letters because he wasn't
23 getting them from people. Out of a show of his own self worth,
24 he just took it for granted that people in his community,
25 whether they were elderly or whatnot, he would help them.

G2i2hal2

1 Despite his faults, which are many, he did seem to make efforts
2 within the community to assist his fellow neighbors.

3 I am just asking your Honor to take the full scope of
4 his actions and his individual characteristics into
5 consideration when you sentence him. And I think he would like
6 to address the court.

7 THE COURT: Okay. We will hear from him in just one
8 minute. Let me hear first from the government.

9 MR. BEATY: Your Honor, unless you have any questions,
10 I will rest on my submission.

11 THE COURT: Well, you are in the awkward position of
12 being required to ask for a guidelines sentence, and now you
13 are before a judge who thinks the guidelines are totally
14 irrational.

15 MR. BEATY: I am aware of that, your Honor.

16 THE COURT: Therefore, there is not much you can do if
17 all you are going to do is argue for a guideline sentence.

18 Do you agree that his role was relatively minor -- I
19 don't mean that in a technical sense, but compared to others in
20 the scheme -- or not?

21 MR. BEATY: Yes, your Honor, both in a substantive
22 sense and in a technical sense, I agree that his role was
23 minor. The plea agreement includes a two-point reduction for a
24 minor role, which is reflected in the guidelines calculation.

25 THE COURT: I just wanted to make sure we were on

G2i2hal2

1 board there.

2 MR. BEATY: Yes, your Honor.

3 THE COURT: The government's argument, as I understand
4 it, is that this is a kind of offense that's beginning to
5 become a real problem and, therefore, a message has to be sent
6 or something like that. Do I have that right?

7 MR. BEATY: That is correct. General deterrence is, I
8 believe, one of the important considerations here, yes.

9 THE COURT: So I agree with that in general, but I
10 don't think that ever translates very easily into specific
11 number of months, no studies that say that 48 months is going
12 to be twice the deterrent effect of 24 months, or something
13 like that. So I think all that that argument argues for is for
14 some imprisonment, but not for any particular level of
15 imprisonment.

16 MR. BEATY: While it is true, your Honor, that no
17 study says that a particular sentence as to a particular crime
18 will necessarily lead to general deterrence, it is the case
19 that one of the reasons that the government is seeking
20 guidelines here and as a general rule seeks a guidelines
21 sentence is the need for uniformity across defendants, both
22 within this district and across the country, and that's one of
23 the reasons we are seeking it here. Given the --

24 THE COURT: I understand that. I have never
25 understood the force of that argument for the following

G2i2hal2

1 reasons:

2 If the guidelines are inherently irrational, as I
3 frankly believe, then this is a uniformity of irrationality.
4 What possible good could come of that?

5 And, secondly, I wonder how much uniformity there
6 really is because, since everyone pleads guilty these days, the
7 determinations as to what they should plead guilty to are made
8 typically through negotiations. For example, I am sure you
9 negotiated about the minor offense. And different prosecutors
10 take different views as to what is an appropriate negotiation
11 result. So I wonder a little bit how much real uniformity
12 there is.

13 MR. BEATY: It is a valid question, your Honor.

14 THE COURT: All right. Let me take you off the hook.

15 Let me hear from the defendant if he wishes to be
16 heard.

17 THE DEFENDANT: Yes, sir. Do I stand up?

18 THE COURT: You can sit down. Just bring that
19 microphone close to you.

20 THE DEFENDANT: Thank you, so much, your Honor, for
21 letting me speak.

22 I was going to the program, and I went this week, as a
23 matter of fact, Tuesday. Monday was a holiday. If I didn't
24 think it was right, I wouldn't have went.

25 And, again, I don't want to get on to, like,

G2i2hal2

1 disrespect the court or the program, and I am struggling, your
2 Honor. I am here. I am not a flight risk. My family is here.

3 You know, you have my papers up there, meaning my past
4 criminal history, but it doesn't tell you about me personally.
5 I am a good man, your Honor. You don't know that.

6 Whatever you decide to give me, I will take it, sir.
7 I am not going to flee. I'm not going to do anything. I
8 surrendered myself.

9 I'm a good person, your Honor, and, again, I do
10 apologize to you, to the court, and to the court -- I mean and
11 to the program, sir.

12 THE COURT: I think there is considerable good in
13 Mr. Hall or he would not have been able to obtain those
14 letters. I thought counsel correctly said that that is an
15 indication of a positive aspect of his personality and
16 lifestyle and relationships that shows the good side.

17 I also think that he had a lot of things that he had
18 to overcome. It is easy for any judge or any other person to
19 sit here and say, oh, you shouldn't use drugs or you shouldn't
20 do this or you shouldn't do that, but we don't have the kind of
21 background that Mr. Hall had starting at an early age that put
22 stresses on him that are not on us.

23 On the other hand, I think the guidelines quite aside,
24 I do agree with the basic proposition that this is a different
25 kind of crime than Mr. Hall has been involved in. And, more

G2i2hal2

1 importantly, it is a crime that, because of the technological
2 opportunities available in the modern world, has become
3 increasingly a problem and needs to be dealt with with prison
4 time. So there is no way that I think that Mr. Hall can
5 receive a sentence that doesn't include prison.

6 The guideline range, I think I have already said my
7 piece on that and I probably shouldn't say anything more, but I
8 think, once again, as so often in cases this court sees, the
9 real message of the guidelines, which I reject totally, is send
10 him away and send him away for as long as possible. That is
11 the message that the Congress and the Sentencing Commission is
12 sending to the judges, and they ought to be ashamed of
13 themselves.

14 Balancing all that together, it seems to me that the
15 lowest possible sentence I can give that will still carry out
16 all of the functions of Section 3553(a) is 18 months. So the
17 defendant is sentenced to 18 months in prison. That 18 months
18 is to run concurrently on Counts One and Two.

19 I will impose a term of supervised release of three
20 years, again concurrently on the two counts.

21 No fine will be imposed because the court makes a
22 finding that this defendant is not in a position to pay any
23 meaningful fine now or in the foreseeable future. However,
24 there is a special assessment of \$100 that is mandatory and
25 must be paid.

G2i2hal2

1 The terms of supervised release are, first, the
2 mandatory conditions that defendant shall not commit any other
3 federal, state, or local crime;

4 That the defendant shall not illegally possess a
5 controlled substance;

6 That the defendant shall not possess a firearm or
7 destructive device; and

8 That the defendant shall cooperate in the collection
9 of DNA.

10 The mandatory drug testing condition is suspended
11 because I will impose, instead, a special condition requiring
12 drug treatment and drug testing.

13 There will also be imposed standard conditions 1
14 through 13. They appear on the face of the judgment and will
15 be gone over with the defendant when he reports to begin his
16 period of supervised release.

17 And, finally, there are the special conditions:

18 First, that the defendant will participate in a
19 treatment program approved by the probation office. The
20 recommendation is an outpatient treatment program. I am going
21 to leave it to the discretion of the probation officer whether
22 it is outpatient or inpatient, but a treatment program which
23 may include testing. The court authorizes the release of
24 available drug treatment evaluations and reports to the
25 substance abuse treatment provider.

G2i2hal2

1 The second condition is that the defendant will
2 participate in an outpatient mental health treatment program --
3 that will be an outpatient program -- on the usual terms and
4 conditions.

5 Finally, the defendant is to report to the nearest
6 probation office within 72 hours from his release from custody.
7 He will be supervised by the district of his residence.

8 Now we have to take up two other matters. One is to
9 advise the defendant of his right of appeal, and the other is
10 the question of remand.

11 Before I get to either of those, is there anything
12 else that either counsel wishes me to deal with on sentencing?

13 MR. BEATY: Just two small things, your Honor.
14 Restitution is mandatory in this case.

15 THE COURT: Yes, so restitution will be imposed.

16 MR. BEATY: And the government will submit a proposed
17 order to the court within 90 days.

18 THE COURT: Yes, that's fine.

19 MR. BEATY: Secondly, just to confirm for the record
20 that the court is adopting the factual findings in the PSR?

21 THE COURT: Yes.

22 MR. BEATY: Thank you, Judge.

23 THE COURT: All right. So, Mr. Hall, you have a right
24 to appeal the sentence. Do you understand that?

25 THE DEFENDANT: Yes, sir.

G2i2hal2

1 THE COURT: And if you can't afford counsel for
2 appeal, the court will appoint one for you free of charge.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: With respect to remand, I am inclined to
6 remand the defendant, but I will hear from counsel if he wishes
7 to be heard.

8 MR. ROTH: Judge, I was just asking Mr. Hall what he
9 had to do outside of the court to get his affairs in order. He
10 does have albeit minimal belongings, but he does have to get
11 them into storage and close up his house and take care of a
12 couple of other affairs and pay his bills.

13 THE COURT: I'm sure that is the case, and I am
14 sympathetic to that; but, to be frank, I don't think I can
15 fully trust him.

16 THE DEFENDANT: Can I say something?

17 THE COURT: Yes.

18 THE DEFENDANT: Your Honor, I am here. Remember when
19 I came in before, you asked them whether I am a flight risk.
20 They said no. I'm not a flight risk. My family is right here.
21 I am not going anywhere. I have the GPS on.

22 THE COURT: Because they are here, they can take care
23 of those items you just mentioned. I'm sorry, Mr. Hall. This
24 is the problem you created by lying. Once you lie to the court
25 or to its representative, in this case Pretrial Services, I

G2i2hal2

1 lose all faith in your promise to return and surrender. I am
2 sorry, but that's the inference I draw.

3 So you will be remanded at this time, and I am signing
4 the order now to that effect.

5 I wish you the best. I have given you, in my view, a
6 very lenient sentence, but you will be remanded.

7 THE DEFENDANT: Your Honor, I got things -- your
8 Honor, I have a GPS on. I have a GPS on.

9 THE COURT: Whatever needs to be done, your family can
10 help you out, but that is the order of the court.

11 MR. BEATY: Your Honor, the government would move to
12 dismiss the open counts.

13 THE COURT: So ordered.

14 - - -
15
16
17
18
19
20
21
22
23
24
25